

EXHIBIT A

Attorney in fact:
Richard M. Zelma, *pro se*
940 Blanch Avenue
Norwood, New Jersey 07648
Tel: 201 767 8153
Attorney for *SELF*

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY

LAW DIVISION

Docket No.: BER - L-5562 -14

CIVIL ACTION

Richard M. Zelma
Plaintiff
Vs.
ALPHA GAS & ELECTRIC LLC, d/b/a ALPHA ENERGY
POWER PLUS USA, LLC, and DAVID WANOUNOU
Defendant(s)

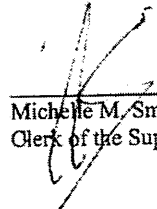
SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.


Michelle M. Smith
Clerk of the Superior Court

DATED: June 14, 2014

Def. ALPHA GAS & ELECTRIC LLC, d/b/a ALPHA ENERGY and DAVID WANOUNOU
SERVE: 34 Skylark Drive, Spring Valley New York 10977.

Def. POWER PLUS USA, LLC,
SERVE: VCORP Services, LLC, 5011 South State Road 7, Suite 106, Davie, FL 33314.

SUPERIOR COURT BERGEN COUNTY
FILED

JUN 10 2014

Laura A. Smalton
DEPUTY CLERK

RICHARD M. ZELMA
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Richard M. Zelma Plaintiff Vs. ALPHA GAS AND ELECTRIC, LLC., a/k/a , d/b/a, ALPHA ENERGY, a New York Limited Liability Company; and POWER PLUS USA, LLC, a Florida Limited Liability Company; and DAVID WANOUNOU, individually and as owner, officer or managing member of Alpha Gas and Electric, LLC. a/k/a, d/b/a, Alpha Energy and as owner, officer or managing member of Power Plus USA, LLC. and Does' (1-5) and ABC Corporations' (1- 5); each acting individually, in concert or as a group. Defendants	SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY LAW DIVISION DOCKET NO.: BER-L- 5562 -14 <u>Civil Action</u> COMPLAINT FOR STRICT LIABILITY STATUTORY DAMAGES; TREBLED DAMAGES and PERMANENT INJUNCTIVE RELIEF
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I. INTRODUCTION

1. Plaintiff, Richard M. Zelma, residing at 940
Blanch Avenue, Norwood, New Jersey, by way of Complaint
as against Defendants', says as follows:

1 2. This suit is brought pursuant to applicable authorities;
2 47 U.S.C. §§227 (b)(1)(B)&(c)(5)(C), (the Telephone Consumer
3 Protection Act of 1991) (Hereinafter "The TCPA") which prohibits
4 the initiation of unsolicited marketing calls made by telephone
5 to persons who have previously registered their phone numbers on
6 the federal and states no-call registry. As set forth herein, the
7 Defendants repeated calls, made to Plaintiff's home, violated the
8 peace and solitude of his home and violated federal and state no-
9 call laws.

10 II. PARTIES

11 3. Richard M. Zelma (hereinafter, "Plaintiff"), is a
12 natural person and senior citizen, residing at 940 Blanch
13 Avenue, in the Borough of Norwood, Bergen County New
14 Jersey 07648.

15 4. Upon information and belief, Defendant David
16 Wanounou (hereinafter "Wanounou" or "Defendant"), is
17 owner, managing member and/or managing partner of
18 Defendants Alpha Energy and PowerPlus USA. Wanounou may
19 be served (individually) at his residence, 34 Skylark
20 Drive, Spring Valley, New York 10977 and transacts or has
21 transacted business in this State.

22 5. Upon information and belief, Defendant Alpha Gas
23 and Electric, (hereinafter "Alpha Energy" or "Defendant")
24 is a domestic for-profit corporation organized under the
25 laws of the State of New York, with its principal
26
27
28

1 corporate office located at 971 Route 45, Suite 202, Pomona,
2 New York, 10970 and transacts or has transacted business in this
3 State.

4
5 6. Defendant Alpha Energy does not list a registered
6 agent; therefore service may be made upon its owner,
7 managing member and/or managing partner, David Wanounou,
8 34 Skylark Drive, Spring Valley New York 10977.

9
10 7. Upon information and belief, Defendant Power Plus
11 USA (hereinafter "Power Plus" or "Defendant") is a for-
12 profit entity organized under the laws of the State of
13 Florida and is owned by Defendant Wanounou.

14
15 8. Upon information and belief, Power Plus USA
16 performs the telemarketing and call-center services for
17 Alpha Energy and transacts or has transacted business in this
18 State.

19
20 9. Power Plus lists its Principal Place of Business
21 at 1002 S. Church Avenue, Tampa, FL 33629 and may be
22 served upon its registered agent, VCORP. Services, LLC,
23 5011 South State Road 7, Suite 106, Davie, FL 33314.

24
25 10. Defendant Does' and ABC corporations' identities
26 are currently unknown to Plaintiff and such parties will
be identified as that information becomes available.

27
28 **III. JURISDICTION AND VENUE**

11. The facts giving rise to this complaint have their

1 primary effect in the County of Bergen. This Court has
2 specific and general jurisdiction under authority of 47
3 U.S.C. §§227 (b)(1)(B)&(c)(5)(C), where Defendants engaged in
4 substantial, continuous and systematic activities by
5 repeatedly initiating unwanted autodialed calls into New
6 Jersey, within this County, to Plaintiff, a resident
7 whose phone numbers are registered with the Federal and
8 States no-call list since inception and the controlling
9 jurisdiction in which the violations occurred.
10

11
12 12. As further set out below, the defendant's and each
13 of them purposely directed their activities towards
14 Plaintiff, deliberately, willfully or knowingly, annoying
15 his household in the course of soliciting their products,
16 goods or services by telephone, for their own financial
17 gain.
18

19 IV. ACTS OF AGENTS

20 13. Whenever and wherever it is herein alleged that the
21 Defendants, either individually, in concert with others or as a
22 group, did any act defined, described or set forth below, it is
23 meant the Defendants performed, caused to be performed and/or
24 participated in the act[s] and/or, that Defendants officers,
25 owner[s], member[s] and/or managing members, partner[s],
26 employees, contractors, assigns, successors, predecessors,
27 affiliates, or 'other' agent[s] performed or participated in
28

1 those acts on behalf of, for the benefit of, and/or under the
2 authority of the Defendants and each of them.

3
4 **V. BACKGROUND**

5 14. Plaintiff's phone number, [201] 767 8153 was
6 listed with the Federal Trade Commission's national do-
7 not-call list, at the commencement of that list,
8 effective, October 1, 2003 and remains on that list to
9 this day. [16 C.F.R. §310 et seq]

10 15. Plaintiff's phone number, [201] 767 8153 was
11 placed on the NO-CALL list administered by the State of
12 New Jersey, at the commencement of that list, effective
13 May 17, 2004 and remains on that list to this day.
14
15 **[N.J.S.A. §56:8-119]**

16 16. Plaintiff has/had no prior business relationship
17 with or knowledge of any of the defendants.

18 17. Plaintiff never inquired about the defendant's
19 products or services nor had any contact of any kind with
20 any of the Defendants prior to their telemarketing calls.

21 18. Plaintiff has never sought, inquired, researched
22 nor had any interest in the 'discount' energy service
23 alleged to be offered by the defendants.

24
25 **VI. FACTUAL ALLEGATIONS**

26 19. Upon information and belief, Defendant Alpha
27 Energy markets itself as a discount energy provider.
28

1 20. Upon information and belief, Defendant David
2 Wanounou owns, manages, operates and/or directs Defendant
3 Alpha Energy.

4 21. Upon information and belief, Defendant Power Plus
5 initiates the subject calls made to benefit Alpha Energy
6 and Wanounou.

7 22. Upon information and belief, Defendant David
8 Wanounou owns, manages, operates and directs the call-
9 center in Florida identified as ("Defendant") Power Plus
10 USA LLC.

11 23. Upon information and belief, David Wanounou, as
12 owner, member and/or managing partner in this consortium,
13 approves the initiation of all telemarketing calls and
14 the script[s] used by his telemarketers.

15 24. It is believed and therefore alleged at all times
16 material to this Complaint, acting alone or in concert with
17 others, Wanounou formulated, directed, controlled, had the
18 authority to control and participated in the acts and practices
19 set forth in this Complaint.

20 25. Defendant Wanounou is responsible for organizing and
21 creating several of the corporations, establishing and
22 maintaining corporate bank accounts, applying for a Florida
23 telemarketing license on behalf of the enterprise companies,
24 leasing one or more call centers used by Defendants' Power Plus

1 and Alpha Energy representatives, writing and /or approving the
2 scripts used in the calls and setting up and paying for telephone
3 numbers used in the scheme.

4
5 26. At the time of the subject calls, Wanounou willfully or
6 knowingly failed to register himself as well as Alpha Energy or
7 Power Plus USA with the New Jersey Department of Law and
8 Public Safety as a telemarketer.

9
10 27. It is believed Wanounou had the authority to control the
11 prohibited acts or practices alleged herein, but chose not to do
12 so.

13 28. As alleged herein, Wanounou's reckless disregard for the
14 law, knowingly implemented and initiated his unlawful acts and
15 thus violated the TCPA.

16
17 VII. THE VIOLATIVE CALLS

18 29. Upon Plaintiffs inquiry with the New Jersey Department
19 of Law and Public Safety, Telemarketing Registration
20 Division, the Defendants or either of them at the time of the
21 subject calls, had not registered with the Telemarketing
22 Registration Division with their intent to solicit into the State
23 nor did they purchase a no-call list from the State as required
24 under N.J.A.C. §13:45D-3.1.

25
26 30. (The "FIRST call") On October 26, 2012 at 3:40:37 PM,
27 Plaintiff answered a call that was made to his
28 residential land-line, [201] 767-8153, identified on his

1 Caller ID coming from [732]-730-5407. The Caller ID "name
2 field" was blank.

3 31. Plaintiff answered that call during its second
4 ring cycle; Plaintiff said hello; no one came on the
5 line; a prerecorded message was not played, the call
6 itself contained no identifying information, the line was
7 silent.
8

9 32. After a few seconds, dial tone returned on line;
10 there was never any abandoned call announcement.
11

12 33. Within 1 minute of that call, Plaintiff called
13 back to [732]-730-5407 where an unidentified prerecorded
14 announcement, stated; **"THIS MAILBOX IS FULL AND CANNOT ACCEPT ANY
15 MORE MESSAGES."**
16

17 34. Therefore, Plaintiff was unable to identify the
18 calling party or make a no-call-request during normal
19 business hours as required by the TCPA.

20 35. (The "SECOND call"). October 26, 2012 at 3:43:42
21 PM, Plaintiff received and answered a call made to his
22 residential land-line of [201] 767-8153, identified on
23 his Caller ID coming from, [732]-730-5407.
24

25 36. Upon Plaintiffs completed greeting of "hello,
26 Plaintiff heard a 'beep' tone, the technical term for the
27 call-transfer-validation process of an automated dialer
28

1 sending the call to a live agent.¹

2 37. Within seconds, a live agent came on line and said;

3 "HI, I NEED TO CHECK WITH THE CUSTOMER WHO
4 HANDLES THE ELECTRIC BILL PLEASE"?

5 38. When Plaintiff acknowledged he was the person and
6 asked who was calling, the caller stated;

7 "AWESOME, THIS IS SHIRLEY SIR; I'M CALLING ON BEHALF OF
8 ALPHA ENERGY. WE ARE A SUPPLIER FOR PSE&G AND
9 ROCKLAND ELECTRIC . . . SIR, (SIC) WE SENT OUT IMPORTANT
10 NOTIFICATION (SIC) WITH YOUR ENERGY BILL AND WHAT THAT
11 NOTICE IS EXPLAINING IS THAT (SIC) STARTING NEXT MONTH YOU
12 WILL BE RECEIVING 10% OFF THE COST OF YOUR NEXT ENERGY
13 BILL (SIC), ISN'T THAT GREAT?"

14 39. The dialog used by that agent led Plaintiff to believe
15 she knew the residence and account holder she was calling; she
16 knew who she was speaking with and in order to have sent out the
17 claimed 'notification', actually had Plaintiffs account
18 information on her computer screen.

19 40. Throughout the duration of that call, the
20 representative did not provide or avoided providing the
21 identity of the actual call-center that initiated the
22 call.

23 41. The caller failed to provide or avoided providing
24 telephone numbers or an address at which the person or
25

26

27

28

¹ Plaintiff is a retired AT&T telephone system technician having a number of credentials in the telephone and communications industry.

1 entity on whose behalf the call was being made, may be
2 contacted.

3 42. Plaintiff repeatedly asked the caller for the name
4 of the call-center and was repeatedly told it was Alpha
5 Gas & Electric.
6

7 43. While Plaintiff tried to get further identity
8 information, the caller deliberately and repeatedly
9 sidestepped those questions, making subtle threats of
10 terminating the call by stating;
11

12 *"SIR I DON'T REALLY HAVE A LOT OF TIME TO ANSWER*
13 *YOUR QUESTIONS . . . IF YOU ARE NOT INTERESTED, I*
14 *HAVE A BUSY SCHEDULE AND MUST CONTINUE*
CONTACTING OTHER CUSTOMERS . . ."

15 thus willfully refusing to provide the requisite
16 call-center identity when asked.

17 44. The caller claimed; *"WE ARE THE ACTUAL SUPPLIER"*.

18 45. The caller continued with her script to claim;
19

20 *"I HAVE ALL YOUR ACCOUNT INFORMATION RIGHT HERE*
21 *ON MY SCREEN, ALL I NEED FOR YOU TO DO IS CONFIRM*
WHAT I HAVE!"

22 46. Plaintiff asked the caller to describe the
23 information shown on the screen; again the caller
24 sidestepped the issue avoiding any response.
25

26 47. Plaintiff offered the name "Richard Martin" to
27 which the caller acknowledged as if that name were
28 actually displayed on her screen.

1 48. This lends truth to the fact the caller's script
2 was carefully crafted and orchestrated to deceive the
3 called party into believing all account information was
4 in their possession. The name "Richard Martin" was a
5 pseudonym.
6

7 49. Within that conversation, Plaintiff requested to
8 speak with a supervisor, at which time, "Shirley" stated;

9 "OK MR. MARTIN, I WILL HAVE MY SUPERVISOR CALL YOU BACK
10 SHORTLY."

11 50. When Plaintiff repeatedly requested the name of
12 the supervisor, "Shirley" repeatedly sidestepped the
13 question claiming she was busy and eventually hung up.
14

15 51. (The "THIRD call"). October 26, 2012 at 3:51:22 PM,
16 Plaintiff answered a call made to his residential land-
17 line, [201] 767-8153, identified on Caller ID coming from
18 [732]-730-5407.
19

20 52. Plaintiff answered that call during its fourth
21 ring cycle; Plaintiff said hello; no one came on the
22 line; a prerecorded message was not played, the call
23 itself contained no identifying information, the line was
24 silent.
25

26 53. After a few seconds, dial tone returned on line;
27 there was never any abandoned call announcement.
28

54. Plaintiff immediately called back to [732]-730-5407

1 where a prerecorded announcement stated;

2 **"THIS MAILBOX IS FULL AND CANNOT ACCEPT ANY MORE**
3 **MESSAGES."**

4 55. (The "FORTH call"). October 26, 2012 at 3:53:18 PM,
5 Plaintiff answered a call made to his residential land-
6 line, identified on Caller ID coming from [732]-730-5407.

7 56. Upon his completed greeting, Plaintiff heard the
8 beep tone of an auto-dialer. Within seconds, plaintiff
9 could hear the audible ring of an outgoing call.
10 Plaintiffs Caller Identification changed the incoming
11 number from [732] 730-5407 to [813] 288 8333, an additional
12 number later to be found belonging to the Defendants.
13

14 57. Within a few seconds, a prerecorded announcement
15 was heard stating;
16

17 **"THERE ARE NO REPRESENTATIVES AVAILABLE TO**
18 **ANSWER YOUR CALL, PLEASE TRY BACK DURING**
19 **NORMAL BUSINESS HOURS, GOOD-BY."**

20 58. After a few seconds, dial tone came back on line;
21 there was no abandoned call announcement and there was
22 never any identity of the calling party by name.

23 59. Upon Plaintiffs information, knowledge and belief,
24 the October 26, 2012 at 3:53:18 PM call, when answered by
25 Plaintiff, was call-forwarded to the defendants'
26 alternate and yet unknown call-center.
27

28 60. On October 26, 2012 at 3:58 PM, plaintiff received

1 a call, identified on Caller ID as [813] 288 8333 from a
2 parson introducing himself as José Menendez, "director of
3 compliance with Alpha Gas and Electric."
4

5 61. Mr. Menendez claimed Plaintiffs number was not on the
6 Federal no-call-list and therefore, they were permitted to call
7 him, a claim which is factually incorrect.

8 62. Menendez was questioned as to his company's registration
9 with the New Jersey Department of Consumer Affairs, as required
10 to telemarket into the state.
11

12 63. Menendez response was, "**they were registered**", a claim
13 which is factually incorrect.

14 64. Plaintiff told Menendez his caller made claims of
15 fraudulent inducement; claiming to be a supplier of electricity;
16 claiming to have included discount coupons in Plaintiffs monthly
17 bill; claiming to have obtained Plaintiffs account records from
18 his utility supplier; claiming to have all of Plaintiffs account
19 information at her disposal; but yet, did not even know who she
20 called.
21

22 65. Menendez had no response other than to say he would
23 listen to the "tape" of his agent's conversation with Plaintiff.
24

25 66. By doing so, Menendez unknowingly disclosed where
26 Plaintiffs conversation was surreptitiously recorded without his
27 prior express consent.
28

67. Upon further questioning, Menendez identified his call

1 center as 'PowerPlus USA'.

2 68. Upon information and belief, the calls cited
3 above, made to Plaintiff, were initiated by call-center
4 Power Plus USA for the purpose to encourage Plaintiff to
5 switch his utility service to Alpha Energy.
6

7 69. At all times material and relevant, at least **FOUR**
8 (4) calls were received by Plaintiff, made to his
9 residential land line, the exact amount of calls to be
10 determined through extensive discovery.
11

12 70. The calls at issue were displayed on Plaintiffs
13 Caller ID as [732]-730-5407 or [813] 288 8333. A caller ID
14 name was never provided for any of the defendants' **FOUR**
15 (4) documented incoming calls.
16

17 71. Each of the Defendant's calls were transmitted
18 with inaccurate caller ID data using the same information
19 for each call; [732]-730-5407 which appears to be a non-
20 working number that prevented Plaintiff from making a no-
21 call request during normal business hours.
22

23 72. The Defendant's auto-dialer did not provide any
24 announcement as to the name of the caller, the address or
25 a phone number at which the caller could be reached when
26 no agent was available.

27 73. In numerous instances throughout the live call, in
28 connection with the offering of the Defendants services, the

1 representative, directly or indirectly, expressly or by
2 implication, stated the defendants were the actual energy
3 supplier.

4
5 74. In truth and in fact, in numerous instances throughout
6 the representations set forth in this Complaint, those statements
7 made by the defendants' representative were false and misleading.

8 75. Following the defendant's statements and claims,
9 Plaintiff made contact with his utility providers, PSE&G
10 and Rockland Electric.

11
12 76. On or about October 23, 2013, Plaintiff made
13 contact with James Campos, Manager Supplier Relations,
14 PSE&G. Mr. Campos unequivocally stated that none of the
15 Defendants would have Plaintiffs account information nor
16 is PSE&G affiliated with any of the Defendants.

17
18 77. On or about the same time frame, Plaintiff made
19 contact with Vincent Frankel, Director-Ethics & Business
20 Standards, Orange & Rockland Utilities, (O&R). Mr. Frankel
21 unequivocally stated that none of the Defendants would
22 have Plaintiffs account information nor is O&R affiliated
23 with any of the Defendants.

24 78. The response from the utility company's management
25 clearly defines the defendants claim[s]; being a supplier
26 for those services; having account information and to have
27 included discount certificates within the utility billing
28 statement[s] was an attempt at fraudulent inducement.

1 **VIII. THIS COURT'S POWER TO GRANT RELIEF**

2 79. 47 U.S.C. §227(b)(3)(A) empowers this Court to
3 grant injunctive and other ancillary relief to prevent
4 and remedy any future violation by the Defendants of any
5 provision of law enforced by the FCC or State Law that
6 protects Plaintiff.
7

8 80. Accordingly, Plaintiff has a cause of action
9 against the Defendants and each of them and hereby seeks
10 relief under the TCPA's Strict Liability statutory damage
11 award as well as Permanent Injunctive Relief pursuant to
12 the foregoing as against the Defendants and each of them.
13

14 **IX. COUNT ONE**
15 **PROHIBITED USE OF AN AUTOMATED DIALING DEVICE**
16 **VIOLATIONS OF 47 U.S.C. §227(b)(1)(B)**

17 81. Plaintiff repeats, re-alleges and incorporates by
18 reference Paragraphs one through eighty as if set forth
19 in full at length.

20 82. On the dates set forth herein, Plaintiff received
21 four (4) calls to his residential phone line, identified
22 as coming from the defendants.
23

24 83. The defendants initiated those four (4) calls
25 using an automated telephone dialing system (ATDS) in
26 violation of the proscriptions of the TCPA, amended
27 February 15, 2012, FCC REPORT & ORDER, NPRM, 25 FCC Rcd at
28 1508-1511, paras. 17-23.

1 84. Prior to their calls, the Defendants did not have
2 Plaintiffs prior express consent to initiate said calls to his
3 landline phone using an autodialer. Id.

4 85. The defendants ATDS did not transmit proper Caller
5 ID information.

6 86. The defendants ATDS did not transmit a name of the
7 calling party in the Caller ID data stream.

8 87. The defendants ATDS did not transmit the requisite
9 2 second abandoned call announcement.

10 88. The defendants ATDS abandoned those calls prior to
11 the requisite 15 seconds before plaintiff could answer.

12 89. The defendants foregoing conduct by each of them
13 initiating four (4) calls, constitutes four (4) distinct
14 and separate violations to the TCPA, 47
15 U.S.C. §227(b)(1)(B) and the Regulations promulgated thereunder
16 at 47 C.F.R. §§64.1200(a)(1)&(3)

17
18 WHEREFORE, Plaintiff demands judgment against
19 Defendants as follows:

20 Award Plaintiff strict liability statutory
21 damages of \$500.00 for each of the violations
22 material to Count One for a total of Two Thousand
23 Dollars (\$2,000.00).

24
25 X. COUNT TWO
26 PROTECTION OF SUBSCRIBER PRIVACY RIGHTS
27 VIOLATIONS OF 47 U.S.C. §227(c)

28 90. Plaintiff repeats, re-alleges and incorporates by
reference Paragraphs one through eighty-nine as if set

1 forth in full at length.

2 91. On the date and times set forth herein, Plaintiff
3 received, identified and answered four (4) calls from the
4 Defendants on his residential telephone [land-line]
5 number [201 767 8153].

6
7 92. The defendants initiated those calls and solicited
8 Plaintiff four (4) times on October 26, 2012. Id.

9 93. The Defendants initiated telemarketing calls to
10 Plaintiff to his number, [201] 767-8153, a number that
11 was registered on the FTC's no-call-list since inception.

12 94. Upon information and belief, the Defendants did
13 not register and /or purchase a do-not-call list from the
14 FTC or the New Jersey Division of Consumer Affairs.

15 95. Upon information and belief, the Defendants agent
16 was not trained to take a do-not-call request.

17 96. Upon information and belief, the Defendants agent
18 did not record Plaintiff's company specific do-not-call
19 request.

20 97. Upon information and belief, the defendants
21 purposely, willfully or knowingly transmitted a non-
22 working phone number to Plaintiff's Caller ID, thus
23 preventing him from making a do-not-call request to that
24 call-center.

25 98. Upon information and belief, the calling agent was

1 instructed by the call-center owner not to disclose the
2 call-centers true identity.

3 99. The defendants' repeated calls gives rise to a
4 cause of action against each of them under authority of
5 47 U.S.C. §227(c)(5) as well as the Regulations promulgated
6 thereunder.
7

8 100. The defendants foregoing conduct by each of them,
9 initiating four (4) calls, constitutes four (4) distinct and
10 separate violations of the TCPA, 47 U.S.C. §227(c) and the
11 Regulations promulgated thereunder, 47 C.F.R. §64.1200(c)(2)(C).
12

13 WHEREFORE, Plaintiff demands judgment against
14 Defendants as follows:

15 Award Plaintiff strict liability statutory
16 damages of \$500.00 for each of the violations
17 material to Count Two for a total of Two Thousand
18 Dollars (\$2,000.00).

19 XI. COUNT THREE

20 Award for Statutory Trebled Damages
21 For Willful or Knowing Violations of
22 the TCPA, 47 U.S.C. §227(b)(3)(C)

23 101. Plaintiff hereby incorporates all of the
24 allegations of paragraphs one through one hundred as if
25 set forth in full at length.

26 102. Plaintiff's notification not to receive any
27 telemarketing calls was made by his registration with the
28 Federal and State no-call-list at inception of the
registry in 2003 & 2004 (respectively). Id.

1 103. The Defendants knowingly or willfully violated the
2 TCPA by soliciting Plaintiff on the dates set forth
3 above, with the prohibited use of an ATDS, intentionally
4 used a carefully orchestrated script with the intent to
5 deceive, implying they were associated with the utility
6 companies, when in actuality, they were not.
7

8 104. On the dates set forth herein, the defendant(s) knowingly
9 or willfully used an affirmative act in an unconscionable
10 commercial practice of deception, fraud, false pretense, false
11 promise and misrepresentation in connection with the sale or
12 advertisement of their alleged discount energy service.
13

14 105. The defendants knowing affirmative act had the potential
15 to mislead or deceive Plaintiff when it was performed.
16

17 106. On the dates set forth above, the defendants knowingly
18 claimed to be an energy supplier, which they are not.
19

20 107. On the dates set forth above, the defendants knowingly
21 claimed to have included discount coupons with Plaintiffs monthly
22 bill, which they did not.
23

24 108. On the dates set forth above, the defendants willfully
25 misrepresented to have Plaintiffs account information on file,
26 which they did not.
27

28 109. On the dates set forth above, the defendants' willfully
created a false pretense by claiming to be a supplier for
Plaintiffs public utilities, which they are not.

1 110. On the dates set forth above, the defendants knowingly
2 claimed to be registered with the Department of Law and
3 Public Safety, New Jersey Division of Consumer Affairs, which
4 they were not.

5
6 111. On the dates set forth above, the defendant(s) knowingly
7 concealed the fact they had no affiliation with either of
8 Plaintiffs utilities, PSE&G or Rockland Electric.

9
10 112. On the dates set forth above, the Defendants knowingly or
11 willfully initiated calls to Plaintiff with their intent to
12 solicit him, using deception and false pretense, knowing his
13 number was on the federal and state no-call-list since inception
14 but chose to call him anyway.

15
16 113. The defendants foregoing acts or practices as set
17 forth above, were known, accepted and approved prior to
18 implementation by Defendant Wanounou, in his capacity as
19 owner, director or managing member for each of the other
20 defendants.

21 114. The Communications Act of 1934, 47 U.S.C. §312
22 (f)(1) (of which the TCPA is a part) does not impose a
23 mental state requirement in that it defines willful
24 conduct as "the conscious or deliberate commission or
25 omission of such act, irrespective of any intent to
26 violate any provision, rule or regulation."
27

28 115. The defendants knew or should have known their

1 intentions to call plaintiff would violate the TCPA as
2 well as New Jersey's no-call law, but they chose to
3 initiate the unlawful calls anyway.

4 116. The Defendants knowingly or willfully violated 47
5 U.S.C. §227(b)(1)(B) which, provides by statute and
6 entitles Plaintiff to treble damages, up to \$1,500.00,
7 for each and every violation of Count One.

8 117. The Defendants knowingly or willfully violated 47
9 U.S.C. §227(c) which, provides by statute and entitles
10 Plaintiff to treble damages, up to \$1,500.00, for each
11 and every violation of Count Two.

12 118. Accordingly, the willful intent to violate the
13 TCPA with direct knowledge of its prohibited acts makes
14 each of the Defendants liable thereunder for treble the
15 \$500 statutory strict liability damage amount per
16 violation to Counts One and Two, to an award of \$1500.00
17 per violation as per Count Three 47 U.S.C. §§227(b)(3)(B)
18 and (C).

19 WHEREFORE, Plaintiff demands judgment against
20 Defendants as follows:

21 Award Plaintiff strict liability statutory
22 trebled damages of \$1500.00 for each of the
23 violations material to Counts One and Two for a total
24 of Twelve Thousand Dollars (\$12,000.00).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

(a) Award Plaintiff strict liability statutory damages of \$500.00 for each of the **FOUR (4) calls** made in violation of the regulations prescribed under **47 U.S.C. §227(b)(1)(B)** material to Count One for a total of \$2000.00.

(b) Award Plaintiff strict liability statutory damages of \$500.00 for each of the **FOUR (4) calls** made in violation of the regulations prescribed under **47 U.S.C. §227(c)(5)(B)** material to Count Two for a total of \$2000.00.

(c) Award Plaintiff **trebled damages** for the series of prohibited calls that were willfully or knowingly made in violation of **47 U.S.C. §§227(b)(1)(B)&(c)(5)**, as defined within the Communications Act of 1934, **47 U.S.C. §312(f)(1)**, administered by the FCC, for the **four (4) calls** addressed in Counts One and Two for a total of \$12,000.00.

1 (d) Award Plaintiff the costs associated
2 with this litigation pursuant to N.J.S.A.
3 §56:8-19

4 (e) Award Plaintiff attorney fees if
5 applicable, pursuant to N.J.S.A. §56:8-19

6 (f) Award Plaintiff Permanent Injunctive
7 Relief pursuant to 47 U.S.C. §227(b)(3)(A)

8 (g) In the alternative, award Plaintiff
9 any Other Equitable Relief the Court deems
10 justified to stop the telemarketing defined
11 and described herein.

12 (h) Plaintiff reserves the right to
13 supplement this prayer, in the event
14 additional violations surface through
15 continuing discovery.

16 (i) Plaintiff waives any award in
17 excess of \$74,500.00, (Seventy Four Thousand
18 Five Hundred Dollars), excluding costs and
19 /or legal fees.

20 Respectfully submitted,

21 By: 

22 RICHARD M. ZELMA, pro se
23 PLAINTIFF

24 Dated: June 9, 2014

RULE 4:5-1 CERTIFICATION

Pursuant to the requirements of R. 4:5-1, I certify that the matter in controversy is not the subject of any other Court or Arbitration proceeding, nor is any other Court or Arbitration proceeding contemplated. No other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

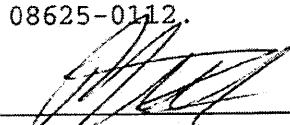
By: 
RICHARD M. ZELMA, pro se
PLAINTIFF

Dated: June 9, 2014

**NOTICE TO ATTORNEY GENERAL
FOR THE STATE OF NEW JERSEY**

NOTICE IS HEREBY GIVEN to the Office of Attorney General for the State of New Jersey pursuant to N.J.S.A. §56:8-20 of the within claim based upon violations of the Consumer Fraud Act and the New Jersey no-call law.

I hereby certify that contemporaneous with the filing hereof, a copy of this pleading has been mailed to the aforesaid Office of Attorney General for the State of New Jersey at the New Jersey State Division of Law, Hughes Justice Complex, 25 W. Market St., P.O. Box 112, Trenton, NJ 08625-0112.


RICHARD M. ZELMA, pro se
PLAINTIFF
Norwood, NJ 07648

Dated: June 9, 2014

BERGEN COUNTY COURTHOUSE
SUPERIOR COURT LAW DIV
BERGEN COUNTY JUSTICE CTR RM 415
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 527-2600
COURT HOURS 8:30 AM - 4:30 PM

DATE: JUNE 12, 2014
RE: ZELMA VS ALPHA GAS AND ELECTRIC LLC
DOCKET: BER L -005562 14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON ESTELA M. DE LA CRUZ

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002
AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.



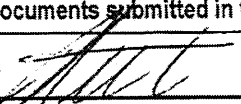
ATTENTION:

RICHARD M. ZELMA
940 BLANCH AVENUE
NORWOOD NJ 07648

JUBDIAL

PARKING NOTICE
Through July 31, 2015
Visitors to the Justice Center are
directed to the Lot located at
150 River St., Hackensack,
Regular shuttles round trip
available from 7:30 am to 7:00 pm

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY		
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1 Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.		
			AMOUNT:		
			OVERPAYMENT:		
			BATCH NUMBER:		
1. ATTORNEY / PRO SE NAME Richard M. Zelma, pro se		2. TELEPHONE NUMBER (201) 767-8153		3. COUNTY OF VENUE Bergen	
4. FIRM NAME (if applicable) N/A			5. DOCKET NUMBER (when available) BER- L- 5562 - 14		
6. OFFICE ADDRESS 940 Blanch Avenue Norwood, NJ 07648			7. DOCUMENT TYPE Complaint		
			8. JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
9. NAME OF PARTY (e.g., John Doe, Plaintiff) Richard M. Zelma		10. CAPTION RICHARD M. ZELMA vs. ALPHA GAS AND ELECTRIC, LLC., POWER PLUS USA, LLC., and DAVID WANOUNOU			
11. CASE TYPE NUMBER (See reverse side for listing) 699 TORT – OTHER		12. HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		13. IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
14. RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		15. IF YES, LIST DOCKET NUMBERS			
16. DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		17. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN			
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.					
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION					
18. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS			
19. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
20. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION					
 21. Do you or your client need any disability accommodations? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION			
22. WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?			
23. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).					
24. ATTORNEY SIGNATURE: 					



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 288 PRUDENTIAL TORT LITIGATION |
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETHA/AREZIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 284 NUVARING | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 601 ASBESTOS |
| 287 YAZ/YASMIN/OCELLA | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐

Putative Class Action

☐

Title 59